

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
et al.,

Plaintiffs,

v.

BUREAU OF THE CENSUS, et al.,

Defendants.

Case No. 8:18-cv-00891-PWG

RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully submit this response to Defendants' notice of supplemental authority and accompanying addendum regarding the ruling in *Center for Popular Democracy Action v. Bureau of the Census*, No. 1:19-cv-10917 (S.D.N.Y. Mar. 18, 2020).

In his oral decision, Judge Hellerstein concluded that the plaintiffs in that case had established standing, including injury-in-fact (Tr. 48:7-48:15), traceability (Tr. 48:16-48:21), and redressability (Tr. 49:14). That holding is consistent with this Court's prior holding and Plaintiffs' arguments in this case that Plaintiffs have sufficiently alleged standing. *See* ECF No. 64 at 41, 46, 50; ECF No. 175 at 26–31.

Much of the balance of Judge Hellerstein's ruling focused on the plaintiffs' Administrative Procedure Act claims and preliminary injunction motion, neither of which are before this Court. Judge Hellerstein also determined that the plaintiffs before him had failed to state a claim for relief under the Enumeration Clause. Respectfully, that holding was in error because, among other things, it did not properly accept the plaintiffs' well-pleaded allegations in the complaint in that case. Accordingly, it is inconsistent with this Court's prior holding finding that Plaintiffs'

allegations stated a claim pursuant to the Enumeration Clause, *see* ECF No. 64 at 54–55. And it was of course done without the deference due to the Fourth Circuit’s ruling and Chief Judge Gregory’s concurrence in this case emphasizing the importance of judicial review pursuant to the Enumeration Clause. *See NAACP v. Bureau of the Census*, 945 F.3d 183, 186, 194 (4th. Cir. 2019).

Early evidence of lower self-response rates in Hard-to-Count communities, like Prince George’s County, as compared to the national average,¹ confirms the urgency of this case. For the reasons stated in their prior briefing, Plaintiffs respectfully request that the Court deny Defendants’ motions to dismiss and for summary judgment or, in the alternative, hold Defendants’ motion for summary judgment in abeyance pending discovery.

¹ As of March 25, 2020, the self-response rate for Prince George’s County, MD was 25.5 percent, with some Census Tracts in the County at significantly lower rates (as low as 7.1 percent for Tract 9800; 13.7 percent for Tract 8059.08; and 15 percent for Tract 8011.06). This supports Plaintiffs’ well-founded allegations about a differential undercount because these response rates are lower than the national average of 28.1 percent. *See* U.S. Census Bureau, *Response Rates*, March 25, 2020, <https://2020census.gov/en/response-rates.html>.

Dated: March 30, 2020

Respectfully submitted,

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[†] This brief does not purport to state the
views of Yale Law School, if any.